

1 BRIAN J. STRETCH (CABN 163973)  
United States Attorney

2 DAVID R. CALLAWAY (CABN 121782)  
3 Chief, Criminal Division

4 MATTHEW J. KLUGE (PABN 204285)  
Trial Attorney, Tax Division  
5 matthew.j.kluge@usdoj.gov  
COLIN SAMPSON (CABN 249784)  
6 Assistant United States Attorney, Tax Division  
Colin.Sampson@usdoj.gov  
7 450 Golden Gate Ave., 11<sup>th</sup> Floor  
San Francisco, CA 94102  
8 Telephone: (415) 436-7020  
Facsimile: (415) 436-7009

9 Attorneys for the United States of America  
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12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 OAKLAND DIVISION

15 UNITED STATES OF AMERICA,  
16  
17 Plaintiff,  
18 v.  
19 RICHARD THOMAS GRANT,  
20 Defendant.

Case No. 4:14-cr-00590-PJH

UNITED STATES' NOTICE OF  
PURSUANT TO RULE 803(10)(B) OF  
INTENT TO OFFER INTO EVIDENCE  
CERTIFICATIONS OF ABSENCE OF  
PUBLIC RECORDS

21  
22 The United States of America, by and through undersigned counsel, hereby provides notice of its  
23 intent to offer evidence pursuant to Federal Rules of Evidence 803(10) and 902(1). Specifically, the  
24 Government intends to offer into evidence Certifications of Lack of Record obtained from the California  
25 Franchise Tax Board. The Government asserts that such records are self-authenticating and fall within  
26 an exception to the hearsay rule.

27 Rule 902 provides that certain evidence is self-authenticating, and thus does not require any  
28 extrinsic evidence of authenticity to be admitted. Rule 902(1) applies to domestic public documents that

1 are signed and sealed, and provides that a document bearing a seal purporting to be that of the United  
2 States, any state, or a department or agency thereof, and a signature purporting to be an execution or  
3 attestation is self-authenticating.

4 Rule 803 provides a number of exceptions to the general prohibition against the admission of  
5 hearsay. Rule 803(10) relates to testimony regarding the absence of a public record. Specifically, Rule  
6 803(10) states that the following is not excluded by the rule against hearsay: “Testimony – or a  
7 certification under Rule 902 – that a diligent search failed to disclose a public record or statement if: (A)  
8 the testimony or certification is admitted to prove that (i) the record or statement does not exist. . .” Fed.  
9 Rule Evid. 803(10).

10 Rule 803(10)(B) requires the Government to provide notice to a defendant when the Government  
11 intends to introduce a certification at least 14 days before trial. Rule 803(10)(B) was amended as of  
12 December 1, 2013, to include this notice provision following the United States Supreme Court’s  
13 decision in *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009). See Fed. Rule Evid. 803, Advisory  
14 Committee Notes, 2013 Amendments. In *Melendez-Diaz*, the Supreme Court stated that a testimonial  
15 certificate could be admitted, without violating the Confrontation Clause, if the accused is given advance  
16 notice and does not timely demand the presence of the official who prepared the certificate. *Melendez-*  
17 *Diaz*, 557 U.S. at 326-327.

18 Trial in this matter is scheduled to begin on June 6, 2016. In accordance with Rule 803(10)(B),  
19 the Government hereby gives written notice of its intent to offer at trial the following certifications of an  
20 absence of a public record to prove that the record or statement does not exist:

- 21 1. Certification of Lack of Record for Form 540 California Resident Income Tax Return for  
22 Richard Grant for 2000;
- 23 2. Certification of Lack of Record for Form 540 California Resident Income Tax Return for  
24 Richard Grant for 2001;
- 25 3. Certification of Lack of Record for Form 540 California Resident Income Tax Return for  
26 Richard Grant for 2002;
- 27 4. Certification of Lack of Record for Form 540 California Resident Income Tax Return for  
28 Richard Grant for 2003;

- 1 5. Certification of Lack of Record for Form 540 California Resident Income Tax Return for
- 2 Richard Grant for 2004;
- 3 6. Certification of Lack of Record for Form 540 California Resident Income Tax Return for
- 4 Richard Grant for 2005;
- 5 7. Certification of Lack of Record for Form 540 California Resident Income Tax Return for
- 6 Richard Grant for 2006;
- 7 8. Certification of Lack of Record for Form 540 California Resident Income Tax Return for
- 8 Richard Grant for 2007;
- 9 9. Certification of Lack of Record for Form 540 California Resident Income Tax Return for
- 10 Richard Grant for 2008;
- 11 10. Certification of Lack of Record for Form 540 California Resident Income Tax Return for
- 12 Richard Grant for 2009;
- 13 11. Certification of Lack of Record for Form 540 California Resident Income Tax Return for
- 14 Richard Grant for 2010;
- 15 12. Certification of Lack of Record for Form 540 California Resident Income Tax Return for
- 16 Richard Grant for 2011;
- 17 13. Certification of Lack of Record for Form 540 California Resident Income Tax Return for
- 18 Richard Grant for 2012;
- 19 14. Certification of Lack of Record for Form 540 California Resident Income Tax Return for
- 20 Richard Grant for 2013;
- 21 15. Certification of Lack of Record for Form 540 California Resident Income Tax Return for
- 22 Richard Grant for 2014;
- 23 16. Certification of Lack of Record for Form 540 California Resident Income Tax Return for
- 24 Richard Grant for 2015;
- 25 17. Certification of Lack of Record for Form 565 California Partnership Return of Income
- 26 for Grant Engineering & Manufacturing, Inc. for 2002;
- 27 18. Certification of Lack of Record for Form 565 California Partnership Return of Income
- 28 for Grant Engineering & Manufacturing, Inc. for 2003;

19. Certification of Lack of Record for Form 565 California Partnership Return of Income for Grant Engineering & Manufacturing, Inc. for 2004;
20. Certification of Lack of Record for Form 565 California Partnership Return of Income for Grant Engineering & Manufacturing, Inc. for 2005;
21. Certification of Lack of Record for Form 565 California Partnership Return of Income for Grant Engineering & Manufacturing, Inc. for 2006;
22. Certification of Lack of Record for Form 565 California Partnership Return of Income for Grant Engineering & Manufacturing, Inc. for 2007;
23. Certification of Lack of Record for Form 565 California Partnership Return of Income for Grant Engineering & Manufacturing, Inc. for 2008;
24. Certification of Lack of Record for Form 565 California Partnership Return of Income for Grant Engineering & Manufacturing, Inc. for 2009; and
25. Certification of Lack of Record for Form 565 California Partnership Return of Income for Grant Engineering & Manufacturing, Inc. for 2010.

The Government has provided copies of these certifications to Defendant in discovery, at *Bates-* numbers US17618-643. In addition, the original certifications are available to Defendant for inspection.

Respectfully submitted this 20th day of May, 2016.

BRIAN J. STRETCH  
United States Attorney

/s/ Colin Sampson  
MATTHEW J. KLUGE  
Trial Attorney, Tax Division  
COLIN SAMPSON  
Assistant United States Attorney, Tax Division  
Attorneys for United States of America